IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7567 OF 2007

Shreshtha Sevashram & Ors. .. Petitioners
Versus
Abhay Mahendra Jain & Ors. .. Respondents.

Mr.R.V.Govilkar with V.R.Saudagar for petitioners
Mr.R.D.Suryavanshi for respondent No.1.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 6th December 2007

P.C.

. The amendment application of the plaintiff is rejected and that is how the present petition.

2. The petitioner is the original plaintiff in R.C.S.No.87 of 2005 on the file of learned Joint Civil Judge, Senior Division, Ratnagiri. The application (Exh.78) was filed for amending the plaint.

3. Amendment application sought amendment to incorporate additional grounds to impugn the sale deed in question and also plead on that ground that the same does not bind the petitioner today. Declaration claimed is that it is illegal and not binding. Now it is sought to be urged that in addition to what is pleaded, the same does not bind petitioner Trust also because the sale deed is vitiated by fraud.

4. That application was vehemently opposed and in my view the learned Judge has clearly erred in going into the merits of the case. He faulted the petitioner plaintiff, in my opinion, erroneously, for not having raised all these grounds earlier. If there is no whisper in the plaint about the same earlier and now the petitioner wants to incorporate the plea, the learned Judge ought to have accepted it. There is no change in the cause of action inasmuch as

relief of declaration remains the same.

5. Now additional ground of fraud to vitiate the sale deed is included. It is not as if that the defendant concerned has no opportunity to meet the amended pleas. Additional written statement can always be put in. Amendment is necessary to effectively and properly resolve the controversy in the suit and to avoid multiplicity of the proceedings as well.

6. In such circumstances, the order under challenge cannot be sustained. It is accordingly quashed and set aside. Amendment application (Exh.78) is granted.

7. The grievance of Mr.Suryavanshi is that after this court expedited hearing of the suit, the plaintiff does not wish to go ahead with it with all seriousness. The petitioner must carry out amendment within the time frame and if it

seeks early disposal of the suit, it must cooperate with the trial court by not seeking unnecessary adjournments. If the amendment is sought at the stage when the affidavit in lieu of examination in chief of plaintiff's witness No.1 was already filed, then, it was the duty of the petitioner to have compensated the contesting defendants so also assure the court that it would cooperate in the early disposal of the case. One of the reason why amendment is rejected by the trial court is because, it thought it fit not to grant any indulgence since the suit is to be disposed of in a particular time frame.

8. In these circumstances, amendment application is granted with a condition that amendment should be carried out within one week from the date of availability of the authenticated copy of this order. Amended plaint be served on the defendants in the Suit within ten days thereafter. The additional written

statement, if any, to be filed within two weeks from the date of receipt of amended plaint. It is clarified that P.W.-1 who is presently being cross examined, shall be cross examined and he should be made available by the petitioner for the same on 7th January 2008. Under no circumstances, the petitioner shall seek adjournment on that date to keep the witness present. Mr.Suryavanshi states that contesting defendants including respondent No.1 before me shall cross examine the said witness and thereafter, cooperate in the expeditious disposal of the case, even by going ahead with the same on day to day basis. Petitioner to pay costs quantified at Rs.2,500/- to the respondent within a week from today. Petition disposed of.

8. In the light of this order, the order passed by the trial court directing forfeiture of the right of respondent No.1 to cross examine P.W.-1 stands set aside.

(S.C.Dharmadhikari, J)